

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARK McKINLEY,

Plaintiff,

-v.-

DETECTIVE KYLE CREVATAS, Shield #24662; DETECTIVE LOGAN PAYANO, Shield #28; DETECTIVE SEAN BROWN, Shield #41; OFFICER EDGAR GARCIA, Shield #3118; and THE CITY OF NEW YORK,

Defendants.

20 Civ. 3606 (KPF)

ORDER OF SERVICE

KATHERINE POLK FAILLA, District Judge:

Plaintiff Mark McKinley, currently incarcerated at Elmira Correctional Facility, brings this *pro se* action under 42 U.S.C. § 1983, alleging that Defendants violated his rights. By Order dated May 8, 2020, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* (IFP).¹ Plaintiff filed a Second Amended Complaint on November 24, 2020, which Complaint was fully docketed on December 11, 2020. (Dkt. #28).

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process ... in [IFP]

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed *in forma pauperis*. *See* 28 U.S.C. § 1915(b)(1).

cases."); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)).

Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that the summons and complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summons and complaint until the Court reviewed the complaint and ordered that a summons be issued. The Court therefore extends the time to serve until 90 days after the date the summons is issued. If the complaint is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App'x 50, 52 (2d Cir. 2010) (summary order) ("As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals' failure to effect service automatically constitutes 'good cause' for an extension of time within the meaning of Rule 4(m).").

To allow Plaintiff to effect service on Defendants Kyle Crevatas, Sean Brown, Logan Payano, and Edgar Garcia through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form ("USM-285 form") for these defendants. The Clerk of Court is further instructed to issue a summons and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon these defendants.

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff, together with an information package.

The Clerk of Court is also directed to amend the official caption to conform to that used in this Order.

Finally, the Clerk of Court is instructed to complete the USM-285 forms with the addresses for Defendants Kyle Crevatas, Sean Brown, Logan Payano, and Edgar Garcia and deliver all documents necessary to effect service to the U.S. Marshals Service.

SO ORDERED.

Dated: December 15, 2020
New York, New York



KATHERINE POLK FAILLA
United States District Judge

DEFENDANTS AND SERVICE ADDRESSES

1. Detective Kyle Crevatas, Shield #24662
Assigned to Narcotics Borough Manhattan South
One Police Plaza
Room 110C
New York, NY 10038
2. Detective Sean Brown, Shield #41
Assigned to Narcotics Borough Manhattan South
One Police Plaza
Room 110C
New York, NY 10038
3. Detective Logan Payano, Shield #28
Assigned to Narcotics Borough Manhattan South
One Police Plaza
Room 110C
New York, NY 10038
4. Officer Edgar Garcia, Shield #3118
Detective Squad
1st Precinct
16 Ericsson Place
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